

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SHIRLEY WRUBEL, *as Trustee for the Sara Hollander Irrevocable Life Insurance Trust,*

Plaintiff,

ORDER
11 CV 1873 (WFK)(LB)

-against-

JOHN HANCOCK LIFE INSURANCE
COMPANY,

Defendant.

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BLOOM, United States Magistrate Judge:

Defendant moves pursuant to Rules 37(a) and 45(e) of the Federal Rules of Civil Procedure to compel non-parties Rubin, Jacobowitz, and B&M Resort, LLC to produce documents and to appear for their depositions. (Docket entry 19.) Defendant served Rubin and B&M Resort, LLC with subpoenas issued from the United States District Court for the Southern District of New York. (Docket entries 19-1 and 19-2.) The subpoenas commanded Rubin and B&M Resort, LLC to produce documents and to appear for their depositions at the offices of Kelley, Drye & Warren LLP in New York, New York.¹ (Id.)

Under Rule 37(a)(2) of the Federal Rules of Civil Procedure, “[a] motion for an order [to compel] to a nonparty must be made in the court where the discovery is or will be taken.” Moreover, Rule 45 of the Federal Rules of Civil Procedure provides that a subpoena “for attendance at a deposition [must issue] from the court for the district where the deposition is to

¹ Although defendant states that Jacobowitz was also served with a subpoena to produce documents and appear for a deposition, defendant does not provide a copy of the subpoena. For the purposes of this Order, the Court assumes that the subpoena served on Jacobowitz was also issued by the United States District Court for the Southern District of New York and commanded Jacobowitz to appear for a deposition at the law offices of Kelley, Drye & Warren LLP. Plaintiff’s counsel states that he is attempting to reach Jacobowitz to schedule his deposition. (Docket entry 20.)

be taken,” and “[t]he *issuing court* may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena.” Fed. R. Civ. P. 45(a)(2)(B) and (e) (emphasis added). As defendant seeks to compel discovery from non-parties Rubin, Jacobowitz, and B&M Resort, LLC that will be taken in the United States District Court for the Southern District of New York, defendant’s motion here is denied without prejudice. To the extent defendant seeks to enforce the non-party subpoenas under Rule 45(e), defendant’s motion is denied because this Court did not issue the subpoenas.

SO ORDERED.

/S/
LOIS BLOOM
United States Magistrate Judge

Dated: March 7, 2012
Brooklyn, New York